
HOUSE BILL 1039

State of Washington 60th Legislature 2007 Regular Session

By Representatives B. Sullivan, Kenney and Chase

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Committee on Env Health Select Com.

1 AN ACT Relating to allowing the department of ecology to issue
2 written opinions for a portion of a facility under the model toxics
3 control act; and amending RCW 70.105D.020 and 70.105D.030.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 70.105D.020 and 2005 c 191 s 1 are each amended to
6 read as follows:

7 (1) "Agreed order" means an order issued by the department under
8 this chapter with which the potentially liable person receiving the
9 order agrees to comply. An agreed order may be used to require or
10 approve any cleanup or other remedial actions but it is not a
11 settlement under RCW 70.105D.040(4) and shall not contain a covenant
12 not to sue, or provide protection from claims for contribution, or
13 provide eligibility for public funding of remedial actions under RCW
14 70.105D.070(2)(d)(xi).

15 (2) "Department" means the department of ecology.

16 (3) "Director" means the director of ecology or the director's
17 designee.

18 (4) "Facility" means (a) any building, structure, installation,
19 equipment, pipe or pipeline (including any pipe into a sewer or

1 publicly owned treatment works), well, pit, pond, lagoon, impoundment,
2 ditch, landfill, storage container, motor vehicle, rolling stock,
3 vessel, or aircraft, or (b) any site or area where a hazardous
4 substance, other than a consumer product in consumer use, has been
5 deposited, stored, disposed of, or placed, or otherwise come to be
6 located.

7 (5) "Federal cleanup law" means the federal comprehensive
8 environmental response, compensation, and liability act of 1980, 42
9 U.S.C. Sec. 9601 et seq., as amended by Public Law 99-499.

10 (6) "Foreclosure and its equivalents" means purchase at a
11 foreclosure sale, acquisition, or assignment of title in lieu of
12 foreclosure, termination of a lease, or other repossession, acquisition
13 of a right to title or possession, an agreement in satisfaction of the
14 obligation, or any other comparable formal or informal manner, whether
15 pursuant to law or under warranties, covenants, conditions,
16 representations, or promises from the borrower, by which the holder
17 acquires title to or possession of a facility securing a loan or other
18 obligation.

19 (7) "Hazardous substance" means:

20 (a) Any dangerous or extremely hazardous waste as defined in RCW
21 70.105.010 (5) and (6), or any dangerous or extremely dangerous waste
22 designated by rule pursuant to chapter 70.105 RCW;

23 (b) Any hazardous substance as defined in RCW 70.105.010(14) or any
24 hazardous substance as defined by rule pursuant to chapter 70.105 RCW;

25 (c) Any substance that, on March 1, 1989, is a hazardous substance
26 under section 101(14) of the federal cleanup law, 42 U.S.C. Sec.
27 9601(14);

28 (d) Petroleum or petroleum products; and

29 (e) Any substance or category of substances, including solid waste
30 decomposition products, determined by the director by rule to present
31 a threat to human health or the environment if released into the
32 environment.

33 The term hazardous substance does not include any of the following
34 when contained in an underground storage tank from which there is not
35 a release: Crude oil or any fraction thereof or petroleum, if the tank
36 is in compliance with all applicable federal, state, and local law.

37 (8) "Independent remedial actions" means remedial actions conducted

1 without department oversight or approval, and not under an order,
2 agreed order, or consent decree.

3 (9) "Holder" means a person who holds indicia of ownership
4 primarily to protect a security interest. A holder includes the
5 initial holder such as the loan originator, any subsequent holder such
6 as a successor-in-interest or subsequent purchaser of the security
7 interest on the secondary market, a guarantor of an obligation, surety,
8 or any other person who holds indicia of ownership primarily to protect
9 a security interest, or a receiver, court-appointed trustee, or other
10 person who acts on behalf or for the benefit of a holder. A holder can
11 be a public or privately owned financial institution, receiver,
12 conservator, loan guarantor, or other similar persons that loan money
13 or guarantee repayment of a loan. Holders typically are banks or
14 savings and loan institutions but may also include others such as
15 insurance companies, pension funds, or private individuals that engage
16 in loaning of money or credit.

17 (10) "Indicia of ownership" means evidence of a security interest,
18 evidence of an interest in a security interest, or evidence of an
19 interest in a facility securing a loan or other obligation, including
20 any legal or equitable title to a facility acquired incident to
21 foreclosure and its equivalents. Evidence of such interests includes,
22 mortgages, deeds of trust, sellers interest in a real estate contract,
23 liens, surety bonds, and guarantees of obligations, title held pursuant
24 to a lease financing transaction in which the lessor does not select
25 initially the leased facility, or legal or equitable title obtained
26 pursuant to foreclosure and their equivalents. Evidence of such
27 interests also includes assignments, pledges, or other rights to or
28 other forms of encumbrance against the facility that are held primarily
29 to protect a security interest.

30 (11) "Operating a facility primarily to protect a security
31 interest" occurs when all of the following are met: (a) Operating the
32 facility where the borrower has defaulted on the loan or otherwise
33 breached the security agreement; (b) operating the facility to preserve
34 the value of the facility as an ongoing business; (c) the operation is
35 being done in anticipation of a sale, transfer, or assignment of the
36 facility; and (d) the operation is being done primarily to protect a
37 security interest. Operating a facility for longer than one year prior

1 to foreclosure or its equivalents shall be presumed to be operating the
2 facility for other than to protect a security interest.

3 (12) "Owner or operator" means:

4 (a) Any person with any ownership interest in the facility or who
5 exercises any control over the facility; or

6 (b) In the case of an abandoned facility, any person who had owned,
7 or operated, or exercised control over the facility any time before its
8 abandonment;

9 The term does not include:

10 (i) An agency of the state or unit of local government which
11 acquired ownership or control through a drug forfeiture action under
12 RCW 69.50.505, or involuntarily through bankruptcy, tax delinquency,
13 abandonment, or other circumstances in which the government
14 involuntarily acquires title. This exclusion does not apply to an
15 agency of the state or unit of local government which has caused or
16 contributed to the release or threatened release of a hazardous
17 substance from the facility;

18 (ii) A person who, without participating in the management of a
19 facility, holds indicia of ownership primarily to protect the person's
20 security interest in the facility. Holders after foreclosure and its
21 equivalent and holders who engage in any of the activities identified
22 in subsection (~~(13)~~) (14)(e) through (g) of this section shall not
23 lose this exemption provided the holder complies with all of the
24 following:

25 (A) The holder properly maintains the environmental compliance
26 measures already in place at the facility;

27 (B) The holder complies with the reporting requirements in the
28 rules adopted under this chapter;

29 (C) The holder complies with any order issued to the holder by the
30 department to abate an imminent or substantial endangerment;

31 (D) The holder allows the department or potentially liable persons
32 under an order, agreed order, or settlement agreement under this
33 chapter access to the facility to conduct remedial actions and does not
34 impede the conduct of such remedial actions;

35 (E) Any remedial actions conducted by the holder are in compliance
36 with any preexisting requirements identified by the department, or, if
37 the department has not identified such requirements for the facility,

1 the remedial actions are conducted consistent with the rules adopted
2 under this chapter; and

3 (F) The holder does not exacerbate an existing release. The
4 exemption in this subsection (12)(b)(ii) does not apply to holders who
5 cause or contribute to a new release or threatened release or who are
6 otherwise liable under RCW 70.105D.040(1) (b), (c), (d), and (e);
7 provided, however, that a holder shall not lose this exemption if it
8 establishes that any such new release has been remediated according to
9 the requirements of this chapter and that any hazardous substances
10 remaining at the facility after remediation of the new release are
11 divisible from such new release;

12 (iii) A fiduciary in his, her, or its personal or individual
13 capacity. This exemption does not preclude a claim against the assets
14 of the estate or trust administered by the fiduciary or against a
15 nonemployee agent or independent contractor retained by a fiduciary.
16 This exemption also does not apply to the extent that a person is
17 liable under this chapter independently of the person's ownership as a
18 fiduciary or for actions taken in a fiduciary capacity which cause or
19 contribute to a new release or exacerbate an existing release of
20 hazardous substances. This exemption applies provided that, to the
21 extent of the fiduciary's powers granted by law or by the applicable
22 governing instrument granting fiduciary powers, the fiduciary complies
23 with all of the following:

24 (A) The fiduciary properly maintains the environmental compliance
25 measures already in place at the facility;

26 (B) The fiduciary complies with the reporting requirements in the
27 rules adopted under this chapter;

28 (C) The fiduciary complies with any order issued to the fiduciary
29 by the department to abate an imminent or substantial endangerment;

30 (D) The fiduciary allows the department or potentially liable
31 persons under an order, agreed order, or settlement agreement under
32 this chapter access to the facility to conduct remedial actions and
33 does not impede the conduct of such remedial actions;

34 (E) Any remedial actions conducted by the fiduciary are in
35 compliance with any preexisting requirements identified by the
36 department, or, if the department has not identified such requirements
37 for the facility, the remedial actions are conducted consistent with
38 the rules adopted under this chapter; and

1 (F) The fiduciary does not exacerbate an existing release.

2 The exemption in this subsection (12)(b)(iii) does not apply to
3 fiduciaries who cause or contribute to a new release or threatened
4 release or who are otherwise liable under RCW 70.105D.040(1) (b), (c),
5 (d), and (e); provided however, that a fiduciary shall not lose this
6 exemption if it establishes that any such new release has been
7 remediated according to the requirements of this chapter and that any
8 hazardous substances remaining at the facility after remediation of the
9 new release are divisible from such new release. The exemption in this
10 subsection (12)(b)(iii) also does not apply where the fiduciary's
11 powers to comply with this subsection (12)(b)(iii) are limited by a
12 governing instrument created with the objective purpose of avoiding
13 liability under this chapter or of avoiding compliance with this
14 chapter; or

15 (iv) Any person who has any ownership interest in, operates, or
16 exercises control over real property where a hazardous substance has
17 come to be located solely as a result of migration of the hazardous
18 substance to the real property through the ground water from a source
19 off the property, if:

20 (A) The person can demonstrate that the hazardous substance has not
21 been used, placed, managed, or otherwise handled on the property in a
22 manner likely to cause or contribute to a release of the hazardous
23 substance that has migrated onto the property;

24 (B) The person has not caused or contributed to the release of the
25 hazardous substance;

26 (C) The person does not engage in activities that damage or
27 interfere with the operation of remedial actions installed on the
28 person's property or engage in activities that result in exposure of
29 humans or the environment to the contaminated ground water that has
30 migrated onto the property;

31 (D) If requested, the person allows the department, potentially
32 liable persons who are subject to an order, agreed order, or consent
33 decree, and the authorized employees, agents, or contractors of each,
34 access to the property to conduct remedial actions required by the
35 department. The person may attempt to negotiate an access agreement
36 before allowing access; and

37 (E) Legal withdrawal of ground water does not disqualify a person
38 from the exemption in this subsection (12)(b)(iv).

1 (13) "Parcel of independent ownership" means a portion of a
2 facility, or contiguous portions of a facility, that has a common
3 owner. Parcels of independent ownership only exist in facilities that
4 include multiple ownerships within their boundaries.

5 (14) "Participation in management" means exercising decision-making
6 control over the borrower's operation of the facility, environmental
7 compliance, or assuming or manifesting responsibility for the overall
8 management of the enterprise encompassing the day-to-day decision
9 making of the enterprise.

10 The term does not include any of the following: (a) A holder with
11 the mere capacity or ability to influence, or the unexercised right to
12 control facility operations; (b) a holder who conducts or requires a
13 borrower to conduct an environmental audit or an environmental site
14 assessment at the facility for which indicia of ownership is held; (c)
15 a holder who requires a borrower to come into compliance with any
16 applicable laws or regulations at the facility for which indicia of
17 ownership is held; (d) a holder who requires a borrower to conduct
18 remedial actions including setting minimum requirements, but does not
19 otherwise control or manage the borrower's remedial actions or the
20 scope of the borrower's remedial actions except to prepare a facility
21 for sale, transfer, or assignment; (e) a holder who engages in workout
22 or policing activities primarily to protect the holder's security
23 interest in the facility; (f) a holder who prepares a facility for
24 sale, transfer, or assignment or requires a borrower to prepare a
25 facility for sale, transfer, or assignment; (g) a holder who operates
26 a facility primarily to protect a security interest, or requires a
27 borrower to continue to operate, a facility primarily to protect a
28 security interest; and (h) a prospective holder who, as a condition of
29 becoming a holder, requires an owner or operator to conduct an
30 environmental audit, conduct an environmental site assessment, come
31 into compliance with any applicable laws or regulations, or conduct
32 remedial actions prior to holding a security interest is not
33 participating in the management of the facility.

34 (~~(14)~~) (15) "Person" means an individual, firm, corporation,
35 association, partnership, consortium, joint venture, commercial entity,
36 state government agency, unit of local government, federal government
37 agency, or Indian tribe.

1 (~~(15)~~) (16) "Policing activities" means actions the holder takes
2 to insure that the borrower complies with the terms of the loan or
3 security interest or actions the holder takes or requires the borrower
4 to take to maintain the value of the security. Policing activities
5 include: Requiring the borrower to conduct remedial actions at the
6 facility during the term of the security interest; requiring the
7 borrower to comply or come into compliance with applicable federal,
8 state, and local environmental and other laws, regulations, and permits
9 during the term of the security interest; securing or exercising
10 authority to monitor or inspect the facility including on-site
11 inspections, or to monitor or inspect the borrower's business or
12 financial condition during the term of the security interest; or taking
13 other actions necessary to adequately police the loan or security
14 interest such as requiring a borrower to comply with any warranties,
15 covenants, conditions, representations, or promises from the borrower.

16 (~~(16)~~) (17) "Potentially liable person" means any person whom the
17 department finds, based on credible evidence, to be liable under RCW
18 70.105D.040. The department shall give notice to any such person and
19 allow an opportunity for comment before making the finding, unless an
20 emergency requires otherwise.

21 (~~(17)~~) (18) "Prepare a facility for sale, transfer, or
22 assignment" means to secure access to the facility; perform routine
23 maintenance on the facility; remove inventory, equipment, or
24 structures; properly maintain environmental compliance measures already
25 in place at the facility; conduct remedial actions to clean up releases
26 at the facility; or to perform other similar activities intended to
27 preserve the value of the facility where the borrower has defaulted on
28 the loan or otherwise breached the security agreement or after
29 foreclosure and its equivalents and in anticipation of a pending sale,
30 transfer, or assignment, primarily to protect the holder's security
31 interest in the facility. A holder can prepare a facility for sale,
32 transfer, or assignment for up to one year prior to foreclosure and its
33 equivalents and still stay within the security interest exemption in
34 subsection (12)(b)(ii) of this section.

35 (~~(18)~~) (19) "Primarily to protect a security interest" means the
36 indicia of ownership is held primarily for the purpose of securing
37 payment or performance of an obligation. The term does not include
38 indicia of ownership held primarily for investment purposes nor indicia

1 of ownership held primarily for purposes other than as protection for
2 a security interest. A holder may have other, secondary reasons, for
3 maintaining indicia of ownership, but the primary reason must be for
4 protection of a security interest. Holding indicia of ownership after
5 foreclosure or its equivalents for longer than five years shall be
6 considered to be holding the indicia of ownership for purposes other
7 than primarily to protect a security interest. For facilities that
8 have been acquired through foreclosure or its equivalents prior to July
9 23, 1995, this five-year period shall begin as of July 23, 1995.

10 ~~((+19+))~~ (20) "Public notice" means, at a minimum, adequate notice
11 mailed to all persons who have made timely request of the department
12 and to persons residing in the potentially affected vicinity of the
13 proposed action; mailed to appropriate news media; published in the
14 newspaper of largest circulation in the city or county of the proposed
15 action; and opportunity for interested persons to comment.

16 ~~((+20+))~~ (21) "Release" means any intentional or unintentional
17 entry of any hazardous substance into the environment, including but
18 not limited to the abandonment or disposal of containers of hazardous
19 substances.

20 ~~((+21+))~~ (22) "Remedy" or "remedial action" means any action or
21 expenditure consistent with the purposes of this chapter to identify,
22 eliminate, or minimize any threat or potential threat posed by
23 hazardous substances to human health or the environment including any
24 investigative and monitoring activities with respect to any release or
25 threatened release of a hazardous substance and any health assessments
26 or health effects studies conducted in order to determine the risk or
27 potential risk to human health.

28 ~~((+22+))~~ (23) "Security interest" means an interest in a facility
29 created or established for the purpose of securing a loan or other
30 obligation. Security interests include deeds of trusts, sellers
31 interest in a real estate contract, liens, legal, or equitable title to
32 a facility acquired incident to foreclosure and its equivalents, and
33 title pursuant to lease financing transactions. Security interests may
34 also arise from transactions such as sale and leasebacks, conditional
35 sales, installment sales, trust receipt transactions, certain
36 assignments, factoring agreements, accounts receivable financing
37 arrangements, easements, and consignments, if the transaction creates

1 or establishes an interest in a facility for the purpose of securing a
2 loan or other obligation.

3 ~~((+23+))~~ (24) "Industrial properties" means properties that are or
4 have been characterized by, or are to be committed to, traditional
5 industrial uses such as processing or manufacturing of materials,
6 marine terminal and transportation areas and facilities, fabrication,
7 assembly, treatment, or distribution of manufactured products, or
8 storage of bulk materials, that are either:

9 (a) Zoned for industrial use by a city or county conducting land
10 use planning under chapter 36.70A RCW; or

11 (b) For counties not planning under chapter 36.70A RCW and the
12 cities within them, zoned for industrial use and adjacent to properties
13 currently used or designated for industrial purposes.

14 ~~((+24+))~~ (25) "Workout activities" means those actions by which a
15 holder, at any time prior to foreclosure and its equivalents, seeks to
16 prevent, cure, or mitigate a default by the borrower or obligor; or to
17 preserve, or prevent the diminution of, the value of the security.
18 Workout activities include: Restructuring or renegotiating the terms
19 of the security interest; requiring payment of additional rent or
20 interest; exercising forbearance; requiring or exercising rights
21 pursuant to an assignment of accounts or other amounts owed to an
22 obligor; requiring or exercising rights pursuant to an escrow agreement
23 pertaining to amounts owed to an obligor; providing specific or general
24 financial or other advice, suggestions, counseling, or guidance; and
25 exercising any right or remedy the holder is entitled to by law or
26 under any warranties, covenants, conditions, representations, or
27 promises from the borrower.

28 ~~((+25+))~~ (26)(a) "Fiduciary" means a person acting for the benefit
29 of another party as a bona fide trustee; executor; administrator;
30 custodian; guardian of estates or guardian ad litem; receiver;
31 conservator; committee of estates of incapacitated persons; trustee in
32 bankruptcy; trustee, under an indenture agreement, trust agreement,
33 lease, or similar financing agreement, for debt securities,
34 certificates of interest or certificates of participation in debt
35 securities, or other forms of indebtedness as to which the trustee is
36 not, in the capacity of trustee, the lender. Except as provided in
37 subsection (12)(b)(iii) of this section, the liability of a fiduciary

1 under this chapter shall not exceed the assets held in the fiduciary
2 capacity.

3 (b) "Fiduciary" does not mean:

4 (i) A person acting as a fiduciary with respect to a trust or other
5 fiduciary estate that was organized for the primary purpose of, or is
6 engaged in, actively carrying on a trade or business for profit, unless
7 the trust or other fiduciary estate was created as part of, or to
8 facilitate, one or more estate plans or because of the incapacity of a
9 natural person;

10 (ii) A person who acquires ownership or control of a facility with
11 the objective purpose of avoiding liability of the person or any other
12 person. It is prima facie evidence that the fiduciary acquired
13 ownership or control of the facility to avoid liability if the facility
14 is the only substantial asset in the fiduciary estate at the time the
15 facility became subject to the fiduciary estate;

16 (iii) A person who acts in a capacity other than that of a
17 fiduciary or in a beneficiary capacity and in that capacity directly or
18 indirectly benefits from a trust or fiduciary relationship;

19 (iv) A person who is a beneficiary and fiduciary with respect to
20 the same fiduciary estate, and who while acting as a fiduciary receives
21 benefits that exceed customary or reasonable compensation, and
22 incidental benefits permitted under applicable law;

23 (v) A person who is a fiduciary and receives benefits that
24 substantially exceed customary or reasonable compensation, and
25 incidental benefits permitted under applicable law; or

26 (vi) A person who acts in the capacity of trustee of state or
27 federal lands or resources.

28 ~~((+26+))~~ (27) "Fiduciary capacity" means the capacity of a person
29 holding title to a facility, or otherwise having control of an interest
30 in the facility pursuant to the exercise of the responsibilities of the
31 person as a fiduciary.

32 **Sec. 2.** RCW 70.105D.030 and 2002 c 288 s 3 are each amended to
33 read as follows:

34 (1) The department may exercise the following powers in addition to
35 any other powers granted by law:

36 (a) Investigate, provide for investigating, or require potentially
37 liable persons to investigate any releases or threatened releases of

1 hazardous substances, including but not limited to inspecting,
2 sampling, or testing to determine the nature or extent of any release
3 or threatened release. If there is a reasonable basis to believe that
4 a release or threatened release of a hazardous substance may exist, the
5 department's authorized employees, agents, or contractors may enter
6 upon any property and conduct investigations. The department shall
7 give reasonable notice before entering property unless an emergency
8 prevents such notice. The department may by subpoena require the
9 attendance or testimony of witnesses and the production of documents or
10 other information that the department deems necessary;

11 (b) Conduct, provide for conducting, or require potentially liable
12 persons to conduct remedial actions (including investigations under (a)
13 of this subsection) to remedy releases or threatened releases of
14 hazardous substances. In carrying out such powers, the department's
15 authorized employees, agents, or contractors may enter upon property.
16 The department shall give reasonable notice before entering property
17 unless an emergency prevents such notice. In conducting, providing
18 for, or requiring remedial action, the department shall give preference
19 to permanent solutions to the maximum extent practicable and shall
20 provide for or require adequate monitoring to ensure the effectiveness
21 of the remedial action;

22 (c) Indemnify contractors retained by the department for carrying
23 out investigations and remedial actions, but not for any contractor's
24 reckless or (~~wilful~~) willful misconduct;

25 (d) Carry out all state programs authorized under the federal
26 cleanup law and the federal resource, conservation, and recovery act,
27 42 U.S.C. Sec. 6901 et seq., as amended;

28 (e) Classify substances as hazardous substances for purposes of RCW
29 70.105D.020(7) and classify substances and products as hazardous
30 substances for purposes of RCW 82.21.020(1);

31 (f) Issue orders or enter into consent decrees or agreed orders
32 that include, or issue written opinions under (i) of this subsection
33 that may be conditioned upon, deed restrictions where necessary to
34 protect human health and the environment from a release or threatened
35 release of a hazardous substance from a facility. Prior to
36 establishing a deed restriction under this subsection, the department
37 shall notify and seek comment from a city or county department with

1 land use planning authority for real property subject to a deed
2 restriction;

3 (g) Enforce the application of permanent and effective
4 institutional controls that are necessary for a remedial action to be
5 protective of human health and the environment and the notification
6 requirements established in RCW 70.105D.110, and impose penalties for
7 violations of that section consistent with RCW 70.105D.050;

8 (h) Require holders to conduct remedial actions necessary to abate
9 an imminent or substantial endangerment pursuant to RCW
10 70.105D.020(12)(b)(ii)(C);

11 (i)(i) Provide informal advice and assistance to persons regarding
12 the administrative and technical requirements of this chapter. This
13 may include site-specific advice to persons who are conducting or
14 otherwise interested in independent remedial actions.

15 (ii) Any (~~such~~) advice or assistance provided under this
16 subsection (1)(i) shall be advisory only, and shall not be binding on
17 the department.

18 (iii) As a part of providing (~~this~~) advice and assistance for
19 independent remedial actions, the department may prepare written
20 opinions regarding whether the independent remedial actions or
21 proposals for those actions meet the substantive requirements of this
22 chapter or whether the department believes further remedial action is
23 necessary at the facility. When appropriate given the conditions or
24 proposed remedial actions at a facility, the department shall issue
25 written opinions under this subsection (1)(i) stating the department's
26 belief that further remedial action is not necessary either for the
27 complete facility in question or, if applicable, for a parcel of
28 independent ownership located within the facility's boundaries. The
29 department's opinion may be limited to the parcel of independent
30 ownership without reflecting upon the facility as a whole.

31 (iv) The department may collect, from persons requesting advice and
32 assistance, the costs incurred by the department in providing (~~such~~)
33 the advice and assistance; however, the department shall, where
34 appropriate, waive collection of costs in order to provide an
35 appropriate level of technical assistance in support of public
36 participation.

37 (v) The state, the department, and officers and employees of the

1 state are immune from all liability, and no cause of action of any
2 nature may arise from any act or omission in providing, or failing to
3 provide, informal advice and assistance; and

4 (j) Take any other actions necessary to carry out the provisions of
5 this chapter, including the power to adopt rules under chapter 34.05
6 RCW.

7 (2) The department shall immediately implement all provisions of
8 this chapter to the maximum extent practicable, including investigative
9 and remedial actions where appropriate. The department shall adopt,
10 and thereafter enforce, rules under chapter 34.05 RCW to:

11 (a) Provide for public participation, including at least (i) public
12 notice of the development of investigative plans or remedial plans for
13 releases or threatened releases and (ii) concurrent public notice of
14 all compliance orders, agreed orders, enforcement orders, or notices of
15 violation;

16 (b) Establish a hazard ranking system for hazardous waste sites;

17 (c) Provide for requiring the reporting by an owner or operator of
18 releases of hazardous substances to the environment that may be a
19 threat to human health or the environment within ninety days of
20 discovery, including such exemptions from reporting as the department
21 deems appropriate, however this requirement shall not modify any
22 existing requirements provided for under other laws;

23 (d) Establish reasonable deadlines not to exceed ninety days for
24 initiating an investigation of a hazardous waste site after the
25 department receives notice or otherwise receives information that the
26 site may pose a threat to human health or the environment and other
27 reasonable deadlines for remedying releases or threatened releases at
28 the site;

29 (e) Publish and periodically update minimum cleanup standards for
30 remedial actions at least as stringent as the cleanup standards under
31 section 121 of the federal cleanup law, 42 U.S.C. Sec. 9621, and at
32 least as stringent as all applicable state and federal laws, including
33 health-based standards under state and federal law; and

34 (f) Apply industrial clean-up standards at industrial properties.
35 Rules adopted under this subsection shall ensure that industrial
36 properties cleaned up to industrial standards cannot be converted to
37 nonindustrial uses without approval from the department. The
38 department may require that a property cleaned up to industrial

1 standards is cleaned up to a more stringent applicable standard as a
2 condition of conversion to a nonindustrial use. Industrial clean-up
3 standards may not be applied to industrial properties where hazardous
4 substances remaining at the property after remedial action pose a
5 threat to human health or the environment in adjacent nonindustrial
6 areas.

7 (3) Before November 1st of each even-numbered year, the department
8 shall develop, with public notice and hearing, and submit to the ways
9 and means and appropriate standing environmental committees of the
10 senate and house of representatives a ranked list of projects and
11 expenditures recommended for appropriation from both the state and
12 local toxics control accounts. The department shall also provide the
13 legislature and the public each year with an accounting of the
14 department's activities supported by appropriations from the state
15 toxics control account, including a list of known hazardous waste sites
16 and their hazard rankings, actions taken and planned at each site, how
17 the department is meeting its top two management priorities under RCW
18 70.105.150, and all funds expended under this chapter.

19 (4) The department shall establish a scientific advisory board to
20 render advice to the department with respect to the hazard ranking
21 system, cleanup standards, remedial actions, deadlines for remedial
22 actions, monitoring, the classification of substances as hazardous
23 substances for purposes of RCW 70.105D.020(7) and the classification of
24 substances or products as hazardous substances for purposes of RCW
25 82.21.020(1). The board shall consist of five independent members to
26 serve staggered three-year terms. No members may be employees of the
27 department. Members shall be reimbursed for travel expenses as
28 provided in RCW 43.03.050 and 43.03.060.

29 (5) The department shall establish a program to identify potential
30 hazardous waste sites and to encourage persons to provide information
31 about hazardous waste sites.

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